

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	Civil No.
Plaintiff,)	
)	
v.)	Clean Air Act, 42 U.S.C. §§ 7671h, 7671g
)	
WAL-MART STORES, INC., SAM'S)	
WEST, INC. AND SAM'S EAST, INC.,)	
)	
Defendants.)	

COMPLAINT

Plaintiff United States of America ("United States"), acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under the Clean Air Act, 42 U.S.C. § 7401 *et. seq.* ("CAA"), pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b)(2), and under 28 U.S.C. §§ 1345 and 1355.
2. Venue is proper in the Western District of Missouri under Section 113 of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395.
3. Notice of commencement of this action has been given to the appropriate State air pollution control agencies of the states in which the violations alleged below occurred, in accordance with 42 U.S.C. § 7413(b).

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PARTIES

4. Plaintiff is the United States suing on behalf of the EPA, an agency of the United States.

5. Defendant Wal-Mart Stores, Inc. is a corporation organized and incorporated under the laws of Delaware, is a retailer, and at all times relevant to this complaint has done business as “Sam’s Club.” Upon information and belief, defendant Sam’s West, Inc. is a wholly-owned subsidiary of Wal-Mart Stores, Inc., was organized and incorporated under the laws of Delaware and Arkansas, and at the times of the violations alleged herein participated in the ownership and/or operation of the Sam’s Club stores referred to in this complaint. Upon information and belief, defendant Sam’s East, Inc. is a wholly-owned subsidiary of Sam’s West, Inc., was incorporated under the laws of Delaware and Arkansas, and at the times of the violations alleged herein participated in the ownership and/or operation of the Sam’s Club stores referred to in this complaint. Hereinafter, the term “Wal-Mart” refers individually and collectively to Wal-Mart Stores, Inc., Sam’s West, Inc. and Sam’s East, Inc. Wal-Mart’s principal place of business is in Bentonville, Arkansas, but Sam’s Club retail stores are located throughout the United States, including in the western federal judicial district of Missouri. Wal-Mart is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Each of the Sam’s Club stores referred to in this complaint has been at all relevant times owned and/or operated by Wal-Mart.

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APPLICABLE STATUTES AND REGULATIONS

6. The United States seeks in this action civil penalties and injunctive relief under Sections 113(b), 608 and 609 of the CAA, 42 U.S.C. §§ 7413(b), 7671g and 7671h, and under 40 C.F.R. Pt. 82, Subpt. F and B.

7. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), provides that the Administrator of the EPA may commence a civil action for a permanent or temporary injunction, and to recover a civil penalty of not more than \$25,000 per day for each violation, for violation of a requirement or prohibition of designated portions of the CAA or any rule promulgated thereunder, including the portions at issue in this complaint. Section 113(b) further provides that the Court may assess such penalties, restrain violations of the CAA and require compliance therewith. The \$25,000 civil penalty limit was increased, effective January 31, 1997, to \$27,500, pursuant to the Federal Civil Penalties Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. § 19.4.

8. Section 608 of the CAA, 42 U.S.C. § 7671g ("Section 608"), and Section 609 of the CAA, 42 U.S.C. § 7671h ("Section 609") set forth requirements relating to class I and class II substances. Class I and class II substances are controlled substances known to destroy stratospheric ozone, and thus to pose a threat to the environment and public health. These substances are listed at 40 C.F.R. Pt. 82, Subpt. A, Appendices A and B. Each of the substances at issue in this complaint is a class I or class II substance.

9. Section 608 provides, at 42 U.S.C. § 7671g(a), that the Administrator of the EPA shall promulgate regulations establishing standards and requirements regarding the use and disposal of class I and class II substances, including requirements that reduce the use and emission of such substances to the lowest achievable level. Pursuant to Section 608, the Administrator of the EPA promulgated regulations set forth at 40 C.F.R. Pt. 82, Subpt. F (40 C.F.R. §§ 82.150-82.166) (“the Section 608 regulations”). 40 C.F.R. § 82.154(m) provides that it is unlawful for any person to sell or distribute, or offer for sale or distribution, any class I or class II substance for use as a refrigerant, unless the buyer has been certified as a technician pursuant to 40 C.F.R. § 82.161 or 40 C.F.R. Pt. 82, Subpt. B, or the buyer meets one of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m). This prohibition went into effect November 14, 1994. 40 C.F.R. § 82.161(c)(3) provides that any program certifying such technicians must provide each person certified a wallet-sized card to be used as proof of certification.

10. Section 609 provides, at 42 U.S.C. § 7671h(a), that the Administrator of the EPA shall promulgate regulations establishing standards and requirements regarding the servicing of motor vehicle air conditioners. Section 609(e), 42 U.S.C. § 7671h(e), further provides that it is unlawful for any person to sell or distribute, or offer to sell or distribute, any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air-conditioning system and that is in a container containing less than 20 pounds of refrigerant,

except to a person who is certified in accordance with Section 609 and who is performing service for consideration on such systems.

11. Pursuant to Section 609, the Administrator of the EPA promulgated regulations set forth at 40 C.F.R. Pt. 82, Subpt. B (40 C.F.R. §§ 82.30-82.42) ("the Section 609 regulations"). 40 C.F.R. § 82.34(b) provides that no person may sell or distribute or offer for sale or distribution any class I or class II substance suitable for use as a motor vehicle air-conditioner refrigerant, in a container of less than 20 pounds, unless the purchaser is properly trained and certified under 40 C.F.R. § 82.40, or intended the container for resale only, and so certifies to the seller under § 82.42(b)(3). 40 C.F.R. § 82.42(b)(3) provides that any person who sells or distributes any such substance must verify that the purchaser is properly trained and certified as a technician in accordance with § 82.40, unless the seller obtains a written statement from the purchaser that the container is for resale only. 40 C.F.R. § 82.40(a)(4) provides that any program certifying such technicians must offer each person certified a wallet-sized card or other proof of certification. The prohibitions of Section 609(e) and the related regulations went into effect November 15, 1992.

PRIOR VIOLATIONS AND ENFORCEMENT HISTORY

12. On February 12, 1993, Region VII of the EPA issued an Administrative Penalty Complaint against Wal-Mart for having sold, in Overland Park, Kansas, containers containing 12 ounces of CFC-12, a class I controlled substance, to a person who was not certified in accordance with Section 609 or the Section 609 regulations, in violation of those

provisions. This complaint resulted in a consent agreement between the EPA and Wal-Mart, and a resulting consent order entered September 13, 1993, by a Regional Judicial Officer of the EPA, whereby Wal-Mart agreed to pay a civil penalty and to remain in compliance with Section 609(e) at its Overland Park store.

13. As a result of additional violations of Section 609(e) and the Section 609 regulations through sales of CFC-12 by a Sam's Club in Dallas, Texas in May and July 1993, on July 29, 1993, Region VI of the EPA issued an Administrative Compliance Order to Wal-Mart, restraining it from further sales in violation of Section 609(e) or the Section 609 regulations, and requiring Wal-Mart to take measures to prevent further violation of these provisions.

14. On August 9, 1993, the EPA issued an Administrative Penalty Complaint against Wal-Mart for the violations of Section 609(e) that were the subject of the July 29, 1993 Administrative Compliance Order, and on October 25, 1993, an administrative consent order was issued ordering Wal-Mart to pay a civil penalty for the unlawful sales.

15. Since 1993, Wal-Mart has continued to sell class I and class II controlled substances in violation of the CAA and its regulations, and the EPA has received several citizen reports thereof. As a result, the EPA has confirmed numerous sales by Sam's Club stores of class I and class II controlled substances in violation of Section 608, Section 609, or their regulations, including sales to EPA investigators.

CLAIMS

COUNT I

Violation of the Section 608 regulations.

16. Plaintiff incorporates paragraphs 1-15 herein.
17. On or about January 21, 1998, at its Sam's Club store #6443 in Goldsboro, North Carolina, Wal-Mart sold for use as a refrigerant a 30-pound container of refrigerant HCFC-22 (also referred to as "R-22"), a class II controlled substance, to a person who was not a person certified as a technician pursuant to 40 C.F.R. § 82.161 or 40 C.F.R. Pt. 82, Subpt. B (hereinafter "certified technician"), and without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).
18. On or about May 23, 1998, at its Sam's Club store #8115 in Augusta, Georgia, Wal-Mart sold for use as a refrigerant two 30-pound containers of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).
19. On or about July 8, 1998, at its Sam's Club store at 4800 Noland Road, Independence, Missouri, Wal-Mart sold for use as a refrigerant a 30-pound container of refrigerant CFC-12 (also referred to as "R-12"), a class I controlled substance, to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

20. On or about July 9, 1998, at its Sam's Club store at 305 Airport Road, Ames, Iowa, Wal-Mart sold for use as a refrigerant a 30-pound container of CFC-12 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

21. On or about November 12, 1998, at its Sam's Club store at 1006 Rohlwing, Addison, Illinois, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

22. On or about December 27, 1998, at its Sam's Club store at 9500 Joliet Road, LaGrange, Illinois, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

23. On or about June 21, 1999, at its Sam's Club store in Burnsville, Minnesota, Wal-Mart sold for use as a refrigerant a case of 12 12-oz cans of CFC-12 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

24. On or about July 23, 1999, at its Sam's Club store at 3660 East Sunshine, Springfield, Missouri, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

25. On or about July 23, 1999, at its Sam's Club store at 3536 Hammons Blvd., Joplin, Missouri, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

26. On or about July 25, 1999, at its Sam's Club store #6402 in Greensboro, North Carolina, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

27. On or about September 22, 1999, at its Sam's Club store in Atlanta, Georgia, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

28. On or about September 23, 1999, at its Sam's Club store in Alpharetta, Georgia, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

29. On or about April 26, 2000, at its Sam's Club store at 1100 Grand Central Avenue, Vienna, West Virginia, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

30. On or about April 27, 2000, at its Sam's Club store at 1 Tygart Valley Mall, Fairmont, West Virginia, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

31. On or about May 2, 2000, at its Sam's Club store at 249 Summitt Park Drive, Pittsburgh, Pennsylvania, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

32. On or about May 8, 2000, at its Sam's Club store at 3621 William Penn Highway, Monroeville, Pennsylvania, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

33. On or about June 9, 2000, at its Sam's Club store at 801 Frank E. Sottile Boulevard, Kingston, New York, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

34. On or about April 17, 2002, at its Sam's Club store at 2801 N.W. 13th Street, Gainesville, Florida, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

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35. On or about April 29, 2002, at its Sam's Club store at 3921 S.W. College Road, Ocala, Florida, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

36. On or about May 16, 2002, at its Sam's Club store at 3440 Ross Clark Circle, Dothan, Alabama, Wal-Mart sold for use as a refrigerant a 30-pound container of HCFC-22 to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

37. In each of the sales set forth in paragraphs 17-36, Wal-Mart did not require evidence that the purchaser was a certified technician or of another condition for a legal sale as set forth in 40 C.F.R. § 82.154(m).

38. Each of the sales set forth in paragraphs 17-36 was a violation of the Section 608 regulations, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, subjects Wal-Mart to liability for injunctive relief and a civil penalty of up to \$27,500 per violation.

Count II

Violation of Section 609 and the Section 609 regulations.

39. Plaintiff incorporates paragraphs 1-15 herein.

40. On or about June 21, 1999, at its Sam's Club store in Burnsville, Minnesota, Wal-Mart sold a case of 12 12-oz cans of refrigerant CFC-12, a class I controlled substance

that is suitable for use as a refrigerant in a motor vehicle air-conditioning system, and which was in containers containing less than 20 pounds of refrigerant, to a person who was not certified pursuant to Section 609, and was not certified pursuant to 40 C.F.R. § 82.40, and did not so certify to the seller in accordance with 40 C.F.R. § 82.42(b)(3), and did not provide a written statement that the containers were for resale only.

41. In the sale set forth in paragraph 40, Wal-Mart did not require verification that the purchaser was certified under 40 C.F.R. § 82.40 or require a written statement from the purchaser that the containers were for resale only, as required under 40 C.F.R. § 82.42(b)(3).

42. The sale set forth in paragraph 40 was a violation of 42 U.S.C. § 7671h(e), 40 C.F.R. § 82.34(b) and 40 C.F.R. § 82.42(b)(3), and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, subjects Wal-Mart to liability for injunctive relief and a civil penalty of up to \$27,500 per violation.

REQUEST FOR RELIEF

Wherefore, the United States requests that this Court:

A. Assess civil penalties in favor of the United States and against Wal-Mart of up to \$27,500 per violation for each violation of the Section 608 regulations;

B. Assess civil penalties in favor of the United States and against Wal-Mart of up to \$27,500 per violation for each violation of Section 609 or the Section 609 regulations;

C. Permanently enjoin Wal-Mart from future violation of the Section 608 regulations, Section 609 and the Section 609 regulations, and require Wal-Mart to undertake affirmative measures, including changing its sales practices, to prevent future violations;

D. Award the United States its costs of this action; and

E. Grant such further relief as the Court deems appropriate.

Respectfully submitted,

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By

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